



BOARD OF SUPERVISORS
AGENDA LETTER

Agenda Number:

Clerk of the Board of Supervisors
105 East Anapamu Street, Room 407
Santa Barbara, CA 93101
(805) 568-2240

Department Name: Planning & Development
Department No.: 053
For Agenda Of: 8/3/2010
Placement: Departmental
Estimated Tme: 60 minutes
Continued Item: Yes
If Yes, date from: 4/6/10, 7/6/10, 7/13/10, 7/27/10
Vote Required: Majority

TO: Board of Supervisors
FROM: Department Director Glenn Russell, Ph.D. (805.568.2085)
Contact Info: Dianne Black, Development Services Director (805.568.2086)
SUBJECT: Information and Discussion Regarding Coastal Commission Suggested Modifications to County and Montecito Land Use and Development Codes

County Counsel Concurrence

As to form: N/A

Auditor-Controller Concurrence

As to form: N/A

Other Concurrences: N/A

Recommended Actions:

That the Board of Supervisors:

- A. Provide direction to the Planning and Development Department regarding how the Board of Supervisors would like to proceed in presenting its comments regarding the recommended modifications to the Coastal Commission for their consideration at the August 12, 2010 hearing;
- B. Authorize the Chair of the Board of Supervisors to sign the letter to the Coastal Commission (see Attachment A) as revised by the Board of Supervisors; and,
- C. Select up to two Board members to represent the County at the Coastal Commission hearing on August 12th, 2010.

1.0 BACKGROUND

Your Board has considered the Coastal Commission staff's suggested modifications to the County and Montecito Land Use and Development Code at several hearing, including July 6th, July 13th and July 27th.

At your Board hearing on July 27, 2010, you received comments from the public as well as information from staff regarding additional progress that had made with the Coastal Commission staff to resolve some of the outstanding differences regarding the more controversial Coastal Commission staff suggested modifications. However, because the revised Coastal Commission staff report was not available that time, staff could not advise your Board with certainty as to whether the Coastal Commission staff had incorporated the County staff proposed revisions as submitted. Therefore, your Board continued the hearing to August 3, 2010.

The discussion and analysis that follows has been updated to address comments regarding regulation of

grazing activities from the past hearing as well as to reflect the revised language of the Coastal Commission staff suggested modifications that are included in the new staff report dated July 28, 2010. The draft letter to the Coastal Commission addressing concerns of the Board on the suggested modifications that was attached to the Agenda Letter for the July 27, 2010 hearing and the accompanying language changes proposed by staff have been updated to reflect the revised Coastal Commission staff language and are attached to this Agenda Letter.

2.0 DISCUSSION/ANALYSIS

Summary of Proposed Changes to Suggested Modifications

1. Modification 9: Requirement for Coastal Development Permit for all intensifications of agriculture.

Original suggested modification proposed by Coastal Commission staff: The suggested modification to the land use tables could arguably require that any agriculture that represents new development or intensification first obtain a Coastal Development Permit. Also, in zones other than agricultural zones, agriculture is not designated as a principal permitted use, and therefore any Coastal Development Permit would be subject to a public hearing and potential appeal to the Coastal Commission.

Revised language proposed by Planning and Development Department staff: Staff requested that Modification 11 (Exemptions) be revised to provide that agriculture that (a) does not occur on slopes of 30 percent or greater or require any cut or fill that exceeds three feet in vertical distance, (b) is not located within 200 feet of a lot line, or within 50 feet of the top of bank of any creek, stream or watercourse, or within 500 feet of an Urban area as designated on the Comprehensive Plan maps, and (c) is not located within environmentally sensitive habitat and buffer areas, is exempt from the Coastal Development Permit requirement. These are similar to the standards used in determining if proposed agricultural grading operations are exempt from a grading permit.

Revised suggested modification proposed by Coastal Commission staff (7/28/2010 CC staff report pages 107 and 108): Coastal Commission staff revised their original modification to incorporate some, but not all, of the Planning and Development staff proposed revisions. As it stands now, the language of Modification 11 (Exemptions) as revised by the Coastal Commission staff would provide that, in addition to the previous exemption from a Coastal Development Permit for (1) cultivated agriculture that occurs within existing areas of cultivation, and (2) grazing that occurs within existing grazing areas where the intensity of use is not significantly increased, new or expanded cultivated areas or grazing operations would also be exempt from a Coastal Development Permit if the cultivation or grazing:

- Does not occur on slopes of 30 percent or greater or require any cut or fill that exceeds three feet in vertical distance or require grading over 50 cubic yards.
- Is not located within 100 feet of the top of bank of any creek, stream or watercourse.
- Is not located within 100 feet of environmentally sensitive habitat areas, riparian areas, or wetlands.
- Does not result in the removal of native or non-native protected trees.
- The Director provides specific written confirmation that the proposed new or expanded agricultural operation conforms to the exemption criteria above, prior to implementing the new or expanded operation.

As part of this revision Coastal Commission staff is also proposing to add the following definitions:

Native Protected Tree. A native tree that is at least six inches in diameter (largest diameter for non-round trunks) as measured 4.5 feet above level ground (or as measured on the uphill side where sloped).

Non-native Protected Tree. A non-native tree that is at least 25 inches in diameter as measured 4.5 feet above level ground (or as measured on the uphill side where sloped). Non-native trees, regardless of size, may be subject to the ESH Overlay in compliance with Section 35.28.090 (Environmentally Sensitive Habitat Area (ESH) Overlay) where such trees comprise habitat for sensitive species such as monarch butterflies, raptors, or other protected species.

The requirement that the Director provide specific written confirmation that the proposed new or expanded agricultural operation conforms to the exemption criteria would mean that an agriculturalist would have to apply to and receive from the Planning and Development Department an exemption from a Coastal Development Permit prior developing the new or expanded cultivated or grazing area.

During public comment at the July 27th meeting it was correctly pointed out that while these development standards may work for cultivated agriculture, assuring compliance with these standards for grazing operations would be quite difficult and would require the installation of miles of fencing, in some cases, to keep the animals out of restricted areas. Therefore, Planning and Development staff recommends that your Board request that the Coastal Commission revise the suggested modification to as it applies to grazing operations to delete the proposed development standards for new or expanded grazing areas, and instead to simply provide that grazing located in existing grazing areas, including the normal rotation of livestock from one pasture to another, is exempt from a Coastal Development Permit. This would also eliminate the qualifier proposed by Coastal Commission staff that in order to be exempt the use does not significantly increase the intensity of use.

2. Modification 9: Requirement for Coastal Development Permit for keeping of animals.

Suggested modification proposed by Coastal Commission staff: This modification could arguably require that a Coastal Development Permit be approved in order to keep any animal in most instances. Additionally, in residential zones, the keeping of large animals (e.g., horses) is not designated as a principal permitted use, and is therefore subject to a public hearing and potential for appeal to the Coastal Commission.

Revised language proposed by Planning and Development Department staff: Staff requested that Modification 11 (Exemptions) be revised to specify that animal keeping is exempt from a Coastal Development Permit in all zones provided it (a) does not occur on slopes of 30 percent or greater or require any cut or fill that exceeds three feet in vertical distance, (b) is not located within 50 feet of the top of bank of any creek, stream or watercourse, and (c) is not located within environmentally sensitive habitat and buffer areas.

Revised suggested modification proposed by Coastal Commission staff (7/28/2010 CC staff report pages 106 and 107): The Coastal Commission staff did not incorporate any of the revisions submitted by Planning and Development.

The suggested modifications primarily designate the keeping of large animals and livestock as a Principal Permitted (PP) use in the agriculture zones and in all other zones (where allowed) as a non-Principal Permitted (P) use. Under this scenario the keeping of large animals and livestock

would require a Coastal Development Permit without hearing in the agricultural zones, and a Coastal Development Permit with hearing in all other zones, unless the animal keeping qualifies for an exemption from a Coastal Development Permit.

As discussed above in regards to grazing operations, compliance with the development standards previously proposed by Planning and Development Department staff would be quite difficult. Therefore staff is now proposing to simplify the revised language and specify, similar to the exemption language for grazing, that animal keeping is exempt if:

- it occurs in areas where animal keeping has historically occurred, and
- the animal keeping table do not specify that a conditional use permit is required (e.g., the animal keeping does not constitute a commercial livestock feed or sales yard).

Additionally staff is recommending that in the non-agricultural zones, that the keeping of large animals and other livestock where otherwise allowed be designated as a Principal Permitted use if limited to two such animals.

3. Modification 9: Restrictions on school facilities allowed by Conditional Use Permit in agricultural zones.

Suggested modification proposed by Coastal Commission staff: As recommended this modification would appear to provide that in agricultural zones only the expansion or reconstruction of existing school facilities would be allowed by Conditional Use Permit.

Revised language proposed by Planning and Development Department staff: Staff requested that the modification be revised to include additional language that specifies that the expansion of school facilities on a lot adjacent to the existing school that is owned by the school may also be allowed by Conditional Use Permit, and that existing, legally permitted schools are considered conforming uses.

Revised suggested modification proposed by Coastal Commission staff: The Coastal Commission staff incorporated the revised language as submitted by Planning and Development.

The revised suggested modification does not require that the ability to expand onto adjacent lots owned by the school only applies to lots owned by the school as of certification of the Land Use and Development Codes, as was discussed by a Board member at the last hearing.

Also, the revised suggested modification would not apply to the former Vista del Mar School located on the Gaviota Coast. This is because:

- 1) The property that the former Vista del Mar school is located on is not owned by the Vista del Mar School District, although they do own two adjacent lots, and
- 2) Since the use of the facility as a school has ceased for over a year, it would no longer be considered a lawful, existing facility.

Since the Coastal Commission staff accepted Planning and Development staff's recommended language, the draft letter to the Coastal Commission does not include additional language changes to address existing schools. If your Board decides to make any further changes, the appropriate discussion will be included.

4. Modifications 9 and 13: Requirement for Coastal Development Permits for voluntary mergers of existing, separate legal lots.

Suggested modification proposed by Coastal Commission staff: The suggested modification specifies that all voluntary mergers are required to be approved with a Coastal Development

Permit, and, since they are not designated as a principal permitted use, are subject to a public hearing and potential appeal to the Coastal Commission.

Revised language proposed by Planning and Development Department staff: Staff requested that Modification 11 (Exemptions) be revised to provide that mergers that would not result in an increase in the development potential of the property would be exempt from the Coastal Development Permit requirement.

Revised suggested modification proposed by Coastal Commission staff (7/28/2010 CC staff report page 112): The Coastal Commission staff did not incorporate the revised language submitted by Planning and Development.

Planning and Development staff recommends that your Board request that the Coastal Commission revise the suggested modification to provide that mergers that the Director determines would not result in an increase in the development potential of the property would be exempt from the Coastal Development Permit requirement, and include language specifying the decision of the Director is subject to local appeal and appeal to the Coastal Commission. This is reflected in the attached draft letter to the Coastal Commission.

5. Modification 10: Restrictions on primary residences located in agricultural zones in order to qualify as a principal permitted use.

Suggested modification proposed by Coastal Commission staff: In order for a primary residence on an agriculturally-zoned lot to qualify as a principal permitted use, (a) the occupancy of the dwelling is restricted to the operator of the primary agricultural use of the property, (b) the floor area of the primary dwelling does not exceed 3,000 square feet, and (c) the residence and all accessory structures and landscaping associated with the residence occupies a development area of no more than 10,000 square feet.

Revised language proposed by Planning and Development Department staff: Staff requested that the modification be revised to (a) allow the dwelling to be occupied by either the operator of the agricultural use or the owner of the lot, (b) increase the size of the residence to 5,000 square feet of floor area, and (c) increase the size of the development area to the following:

- For lots that are at least 10 acres but less than 20 acres in area, the development area is limited to 10,000 square feet except that for each full acre of lot area in excess of 10 acres the development area may be increased by an additional 1,000 square feet to a maximum of 20,000 square feet (same as Agricultural Preserve Uniform Rules requirement for super-prime preserves).
- For lots that are 20 acres or greater in area, the development area is limited to two acres or three percent of the gross lot area, whichever is less (same as Agricultural Preserve Uniform Rules requirement for prime and non-prime preserves).

Revised suggested modification proposed by Coastal Commission staff (7/28/2010 CC staff report page 96): Coastal Commission staff revised their original modification to:

- Allow either the operator of the principal permitted primary agricultural use of the property, or the owner of the lot, to occupy the primary dwelling; the requirement that there is an existing principal permitted primary agricultural use of the property is retained.
- Increased the size of the primary dwelling to 5,000 square feet.

The originally proposed 10,000 square foot development area for the primary dwelling and all structures and landscaping accessory to the primary dwelling was not changed.

Planning and Development staff recommends that your Board request that the Coastal Commission revise the suggested modification to increase the size of the development area for the residence and all accessory structures and landscaping associated with the residence to be consistent with the area limitations previously proposed by Planning and Development Department staff that are consistent with County's Uniform Rules for Agricultural Preserves. The draft letter to the Coastal Commission includes this as requested change to the Coastal Commission staff's recommendation.

6. Modification 10: Restrictions on accessory uses designated as principal permitted uses in all zones.

Suggested modification proposed by Coastal Commission staff: For all of the different zones, only a very restricted list of accessory uses and structures are proposed to be designated as principal permitted uses; all others would be non-principal permitted uses, subject to a public hearing and potential appeal to the Coastal Commission.

Revised language proposed by Planning and Development Department staff: Staff requested that the modification be revised to state that any structure and/or use that is customarily incidental and secondary to the principal permitted use, and that does not change the character of the principal permitted use, be allowed as a principal permitted accessory use.

Revised suggested modification proposed by Coastal Commission staff (7/28/2010 CC staff report pages 95 through 100): Coastal Commission staff revised their original modification include the language proposed by Planning and Development except that, within the Agricultural, Resource Protection, and Residential zones, artist studios, guest houses and residential second units would still be designated as a non-principal permitted use.

Planning and Development staff recommends that your Board still request that the Coastal Commission revise the suggested modification to include artist studios and guest houses as principal permitted accessory uses in the Agricultural, Resource Protection, and Residential zones. Staff is not recommending that residential second units be designated as a principal permitted use as they are designated in the existing Article II Coastal Zoning Ordinance as appealable development subject to appeal to the Coastal Commission.

The draft letter to the Coastal Commission has been revised to request that artist studios and guest houses be considered as principal permitted accessory uses.

7. Modification 14: Elimination of flexibility is approving certain lot line adjustments.

Suggested modification proposed by Coastal Commission staff: The existing finding regarding lot line adjustments that result in lots that are substandard in size is proposed to be revised from requiring that development of a substandard size lot resulting from the adjustment shall avoid or minimize impacts to environmentally sensitive habitats including buffer areas where appropriate to instead require that that such development avoids, in all cases, impacts to environmentally sensitive habitats including buffer areas. This revision reduces or possibly eliminates the flexibility of the existing finding and may preclude the County from approving a lot line adjustment that may provide for better resource protection overall.

Revised language proposed by Planning and Development Department staff: Staff requested that the modification be revised to delete the proposed revision to the finding in order to retain this flexibility.

Revised suggested modification proposed by Coastal Commission staff (7/28/2010 CC staff report pages 95 through 100): The Coastal Commission staff deleted the proposed revision to the

finding.

The draft letter to the Coastal Commission has been revised to delete the reference to Modification 14.

8. Modification 21: Restrictions on minor improvements located near coastal bluffs and bluff staircases and access ways.

Suggested modification proposed by Coastal Commission staff: New language is proposed to be added that arguably would (a) prohibit any improvements to be located within 15 feet from the edge of the coastal bluff and (b) only allow bluff staircases and access ways if they provide public access to the beach.

Revised language proposed by Planning and Development Department staff: Staff requested that the modification be revised to (a) allow fences required for safety purposes and public facilities (e.g., public bike paths and trails) to be located closer than 15 feet provided they are at least five feet from the bluff edge and (b) state that lawful staircases and access ways existing as of the date that the Land Use and Development Code is certified are considered to be lawful, conforming structures, thus allowing for structural repairs to occur.

Revised suggested modification proposed by Coastal Commission staff (7/28/2010 CC staff report page 125): The Coastal Commission staff partially accepted the revisions proposed by Planning and Development staff and added other provisions. As it is now written the suggested modification would:

- Allow visually permeable and visually compatible fences required for safety purposes and public access ways (e.g. public trails) that qualify as minor improvements to be located closer than 15 feet from the bluff edge but in no case closer than five feet from the bluff edge.
- Provide that lawfully established public bicycle paths located closer than 15 feet from the bluff edge may be repaired and maintained, including structural repairs.
- Provide that lawfully established staircases and access ways that provide beach access and are not available for use by the general public may be repaired and maintained, including structural repairs, provided that cumulatively no more than 50 percent of the structural underpinnings (including foundations, pilings, and support beams but not including individual stairs and railings) are reconstructed or replaced over the life of the structure. The revised language also states that the reconstruction or replacement of 50 percent or more of a staircase is not repair and maintenance but instead constitutes a replacement structure.

Planning and Development staff recommends that your Board request that the Coastal Commission revise the suggested modification, in regards to staircases and access ways, to include the language previously provided by staff that lawful, existing staircases and access ways that provide beach access and are not available for use by the general public are determined to be legal, conforming structures. This would allow for structural repairs without limitation as to the amount of material being replaced, provided a Coastal Development Permit with hearing, and subject to appeal to the Coastal Commission, is approved by the County.

The draft letter to the Coastal Commission has been revised to delete the discussion regarding minor improvements within bluff setback areas. The language regarding designating lawful, existing stair cases and access ways as lawful, conforming structures is retained.

9. Modification 34: Codifying potential sea level rise scenarios.

Suggested modification proposed by Coastal Commission staff: This suggested modification

would add specific sea level rise scenarios that the County must use in analyzing near-shore projects for potential coastal hazards. After certification these could only be changed by amending the County's Local Coastal Plan.

Revised language proposed by Planning and Development Department staff: Staff requested that the modification be revised to allow the use of a different rate if supported by the best scientific information available at time of project review.

Revised language proposed by Coastal Commission staff (7/28/2010 CC staff report page 165): Instead of using the language provided by Planning and Development staff, the Coastal Commission staff rewrote the entire suggested modification. As currently proposed, the new language still requires that a coastal hazards analysis be prepared for all proposed near shore development, but instead of including specific ranges of future sea level rise for different types of development, the modification now just states that:

- The best available scientific information with respect to the level of future sea level rise and the effects of long-range sea level rise shall be considered in the preparation of findings and recommendations as part of the coastal hazards analysis,
- All input parameters for hazard analysis shall be clearly described in the analysis.
- The hazard analysis may include previously developed ranges of sea level rise scenarios provided that if judgment was used to choose between a range of values, the basis for the selected sea level rise estimate should be provided.

The draft letter to the Coastal Commission has been revised to delete the reference to Modification 34.

Draft Letter to the Coastal Commission for consideration at their August 12th Hearing

Attached to this Agenda Letter is a draft letter to the Coastal Commission for their August 12th hearing. The letter includes a discussion of the potential revisions to the suggested modifications that were outlined at the July 13th hearing; this letter has been updated to reflect the revised suggested modifications contained in the July 28, 2010 Coastal Commission staff report. The following options are provided for your Board's consideration for inclusion in the draft letter as direction to the Coastal Commission.

1. Certify the amendment as submitted without substantial suggested modifications.
2. Bifurcate the process and certify the amendment without suggested modifications 9, 10, 13, 21, and 34.
3. Provide input on suggested modifications 9, 10, 13, 21, and 34 to the County and your staff, and direct CCC staff to work with the County and the local community on the language of the suggested modifications.
4. Certify the amendment with changes to suggested modifications 9, 10, 13, 21, and 34 shown in the attachment to this letter.

Staff seeks input on the draft letter and authorization for the Chair of the Board to sign the letter.

Options for the August 12th Coastal Commission Hearing

The main options for the Board of Supervisors are included in the draft letter to the Coastal Commission and outlined above. Additionally, the Board has the option of requesting a continuance of the item for as long as January 2011, which is the Commission's statutory deadline to act on the

amendment, or your Board could withdraw the amendment and not pursue its certification by the Coastal Commission. Staff does not recommend that the Board take either of these actions. As to a continuance, County staff believes that in order to move the discussion regarding the appropriateness of the suggested modifications forward, it is time to hear from the Coastal Commission itself. While County staff has made significant progress with Commission staff, Commission staff appears to have reached its limits to amend its suggested modifications without policy direction from the Coastal Commission.

As to the withdrawal, County staff does not recommend that the Board withdraw the amendment. The Board will have six months from Coastal Commission action to decide whether or not to accept the suggested modifications adopted by the Coastal Commission. Staff recommends that the Board evaluate the suggested modifications once they are adopted, and retain the options to accept or reject certification with the suggested modifications. To review, if the Board decides not to accept all the certified modifications within the six month period, then the County and Montecito LUDCs would not be certified and Article II would continue as the implementation portion of the County's certified Local Coastal Program. The County and Montecito LUDCs would need to be amended to remove all Coastal Zone specific zoning regulations. Additionally, any recently approved amendments to the County and Montecito LUDCs that affect the coastal area would have to be reprocessed as amendments to Article II and resubmitted to the Coastal Commission for certification, further delaying their implementation. These include:

- Eastern Goleta Valley Residential Design Guidelines (County LUDC)
- Isla Vista Master Plan (County LUDC)
- Santa Barbara Ranch Naples Townsite Zone (County LUDC) and Transfer of Development Rights Program (County and Montecito LUDCs)
- Process improvements regarding permit applications for overall sign plans, road naming, septic systems within Special Problem Area, solar energy systems, special care facilities, and time extensions (County and Montecito LUDCs)
- Time extensions due to economic hardship considerations (County and Montecito LUDCs).

If your Board chooses to reject the suggested modifications, it is likely that the Coastal Commission staff will propose very similar modifications in the review and certification process of any future amendments to Article II that the County may wish to make.

Fiscal and Facilities Impacts:

Budgeted: Yes.

Fiscal Analysis:

Funding for this ordinance amendment work effort is budgeted in the Planning Support program of the Administration Division on page D-324 of the adopted Planning and Development Department's budget for fiscal year 2010-2011. There are no facilities impacts.

Special Instructions:

The Clerk of the Board will send a copy of the Minute Order to the Planning and Development Department, attention Noel Langle.

Attachments:

8/3/2010 Draft letter to the Coastal Commission dated with attached requested revisions to suggested modifications

7/28/2010 Revised Coastal Commission Staff Report

Authored by:

Noel Langle (805.568.2067)